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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Letter dated 29 August 2001 from the Permanent Representative of Cyprus to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

Upon instructions from my Government, I have the honour to bring to your attention decision 1 (59) on Cyprus that the Committee on the Elimination of Racial Discrimination adopted at its fifty-ninth session in Geneva on 10 August 2001 (A/56/18, para. 481). In that decision (annexed hereto), the Committee, deeply regretting that the Government of Cyprus continued to be prevented from implementing the Convention on the whole of its national territory due to the foreign occupation of part of that territory reaffirmed the importance of putting an end to the foreign occupation of Cyprus so that all human rights and freedoms would be enjoyed by all Cypriots irrespective of their ethnic origin as envisaged in the International Convention on the Elimination of All Forms of Racial Discrimination, in particular the rights to freedom of movement and residence, and to own property throughout Cyprus. The Committee requested the Secretary-General of the United Nations to call the attention of the Security Council, the General Assembly and other appropriate bodies of the United Nations to that decision, in the earnest hope that they would take the measures required for the implementation of their relevant resolutions and decisions.

I would greatly appreciate it if the present letter along with the full text of the said decision of the Committee were circulated as a document of the Commission on Human Rights under agenda item 6, entitled "Racism, racial discrimination, xenophobia and all forms of discrimination".

(Signed) Alexandros VIKIS
Ambassador
Permanent Representative

GE.01-16235 (E) 121201

Annex

Decision 1 (59) on Cyprus

The Committee on the Elimination of Racial Discrimination,

Having considered the fifteenth and sixteenth periodic reports of Cyprus under the International Convention on the Elimination of All Forms of Racial Discrimination,

Recalling the concerns expressed in its earlier decisions and concluding observations on Cyprus,

Deeply regretting that the Government of Cyprus continues to be prevented from implementing the Convention on the whole of its national territory owing to the foreign occupation of part of that territory,

1. Reaffirms the importance of putting an end to the foreign occupation of Cyprus so that all human rights and freedoms will be enjoyed by all Cypriots irrespective of their ethnic origin, as envisaged in the International Convention on the Elimination of All Forms of Racial Discrimination, in particular the rights to freedom of movement and residence and to own property throughout Cyprus;

2. Requests the United Nations Secretary-General to call the attention of the Security Council, the General Assembly and other appropriate bodies of the United Nations to this decision, in the earnest hope that they will take the measures required for the implementation of their relevant resolutions and decisions.

1483rd meeting
10 August 2001

UNITED NATIONS **E**

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Items 9 (a) and 11 (e) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, INCLUDING: QUESTION OF HUMAN RIGHTS IN CYPRUS

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: RELIGIOUS INTOLERANCE

Letter dated 16 October 2001 from the Permanent Representative of Cyprus to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

Upon instructions from my Government, I have the honour to transmit to Your Excellency three letters from the Most Reverent Metropolitan Pavlos of Kyrenia concerning the destruction and desecration of churches in Turkish occupied villages in the district of Kyrenia. Two of the letters, dated 18 June and 4 July 2001, are addressed to the Acting Special Representative of the Secretary-General of the United Nations in Cyprus, and the third one, dated 23 July 2001, is addressed to the Secretary-General of the United Nations.

I should be grateful if the present letter along with the texts of the three letters* from the Most Reverent Metropolitan Pavlos of Kyrenia could be circulated as a document of the fifty-eighth session of the Commission on Human Rights under agenda item 9 (a) "Question of human rights in Cyprus", and item 11 (e) "Religious Intolerance".

(Signed): Alexandros VIKIS
Ambassador
Permanent Representative

* Reproduced as received, in the language of submission only

GE.01-16184 (E) 071201

Annex

ΙΕΡΑ ΜΗΤΡΟΠΟΛΙΣ ΚΥΡΗΝΙΑΣ

Αχιλλέως 3 Λυκαυτία
Τ.Θ. 298, Αριθμοί 2112

His Excellency
Mr. Zbigniew WLOSOWICZ.
Acting Special Representative of the Secretary -General of the UN in Cyprus,
Nicosia.

Your Excellency,

We, the Metropolitan of the occupied Holy Diocese of Kyrenia, express our grave concern and strong protest to your Excellency for the outrageous news learned from the Turkish Cypriot newspaper, AVRUPA on Friday 16. 6. 01, that the interior of the church of Panaghia of Thermia in the illegally occupied village of Thermia at Kyrenia District has been destroyed, and that on the interior walls of the church was written with graffiti «*You, soldier that you enter here, do not leave without going to stool*». The newspaper also published that the illegally excavated Greek Orthodox nearby cemetery will be turned into a restaurant and a night club.

We draw your attention to the fact that the systematic plundering of our religious and cultural heritage and the destruction and shattering of every Christian symbol in our holy island began as soon as Cyprus was occupied by the Turkish troops in 1974. Since then, historical religious places have been continuously looted without any barrier.

This is outrageous, especially when one considers that the Government of the Republic of Cyprus is keeping and maintaining every mosque and shrine of the Muslim faith even in the most remote village of the free part of the island. The same could be said for the Greek Orthodox population who respect not only the Muslim but every shrine of whatever denomination, which exists in the island. The mosques in the non occupied areas are having services frequently which are attended by Muslim diplomats, visitors and tourists.

Turkey still occupying by force part of our island, has not only stripped our churches from their icons, frescoes and sacred vessels but even changed many of them into Muslim mosques, store-rooms and latrines.

We ask you to join us in our efforts to get everything we rightly own back by raising a voice of protest against the continuous violation of human rights in Cyprus by Turkey and taking whatever measures you might consider appropriate to safeguard our human rights including our religious and cultural heritage.

Yours sincerely.

† Ὁ Κυρηνείας Παῦλος Δ. Phil (Oxon)

The Most Revd. Metropolitan Pavlos of Kyrenia

The Holy Diocese of Kyrenia
Nicosia, 18 June 2001.

ΙΕΡΑ ΜΗΤΡΟΠΟΛΙΣ ΚΥΡΗΝΕΙΑΣ
Αχιλλέως 3 Λευκωσία
Τ.Θ. 258, Λευκωσία 2112

His Excellency
Mr. Kofi Anan,
The Secretary-General of the United Nations,
New York, U.S.A

Your Excellency,

We, the Metropolitan of the occupied Greek Orthodox Holy Diocese of Kyrenia, express our deep concern and strongest protest to your Excellency for the outrageous news learned from the Greek Cypriot newspaper, «*POLITIS*» today, that the Church of the Virgin Mary, on the outskirts of Trimithi village in the Kyrenia Diocese has been changed to a college of Art.

According to the publication, the illegal British estate Agency *Ian Smith* which specializes in selling the stolen property of the Greek Cypriot refugees announces that the Church has been «*renovated*» and that the management of the establishment was undertaken by a «*British College of Art*» which will set up on the premises of the Church the «*Levantine College of Art*».

The Denktash illegal regime, which stripped our churches of holy relics and valuable icons, is casting aside this small token of humanity- not in the shadows of a thief, but advertised in the bright light of a defiant criminal, daring to challenge his actions.

I remind you of a similar protest I made on 13 May 1996 about an advertisement of the British/Turkish Cypriot estate Agency *Keskin & Smith*, published in the *Cyprus Today* newspaper on 11 May 1996, relating to the «*leasehold*» of the same church.

These acts constitute a blatant violation of human rights. We hold you responsible for not taking any action to implement and restore international law to the whole island of Cyprus. I call on your Organization to offer sanctuary and protection to our churches in the occupied area of Cyprus just as the Government of the Republic of Cyprus has preserved and protected every mosque, shrine and cemetery in the free areas of the island.

Yours sincerely,

+ Ο Κυρηνείας Παύλος

The Most Revd. Metropolitan Pavlos of Kyrenia (D. Phil. Oxon)

The Kyrenia Holy Diocese
Nicosia, 4 July, 2001.

Ο ΜΗΤΡΟΠΟΛΙΤΗΣ ΚΥΡΗΝΕΙΑΣ
ΠΑΥΛΟΣ

Αγχίαλου 3, Λευκωσία
Τ.Θ. 25Ν, Λευκωσία 2112

His Excellency
Mr. Koffi Anan,
The Secretary- General of The United Nations,
New York.

Your Excellency,

We, the Metropolitan of the occupied Holy Diocese of Kyrenia, express our sacred exasperation, and strong protest to your Excellency for the news learned today from the Turkish Cypriot newspaper «*AVRUPA*» Monday 23.7.01. that the Greek Orthodox cemetery situated nearby the church of Panaghia of Thermia in the illegally occupied village of Thermia at Kyrenia District is illegally excavated by the pseudo regime of Denktash for the purpose of converting it into an entertainment night club. This act constitutes an outrageous violation of our human rights in Cyprus by Turkey.

I remind you of a similar protest I made on 18 June 2001 about the destruction of the interior of the same church and the systematic plundering of our religious and cultural heritage by the Turkish troops.

We hold your Organization responsible for not taking any action to implement justice and restore international law throughout Cyprus by forcing Turkey to comply with international law.

Yours sincerely,

† Ὁ Κυρηνείας Παῦλος

The Most Revd. Metropolitan Pavlos of Kyrenia D. Phil. (Oxon.)

The Holy Diocese of Kyrenia,
Nicosia, 23 July, 2001.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (d) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Letter dated 17 October 2001 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith the texts, in their original versions and their Arabic translations, of the following documents:

(i) Report on, and evaluation of, the Lockerbie Trial conducted by the special Scottish Court in the Netherlands at Kamp van Zeist, by Dr. Hans Köchler, University Professor, international observer of the International Progress Organization, nominated by the United Nations Secretary-General, Kofi Annan, on the basis of Security Council resolution 1192 (1998).

(ii) Judgement rendered on 13 March 2001 by the Criminal Chamber of the Court of Cassation of the French Republic at the Palais de Justice, Paris.

I would be very grateful if you could kindly circulate the attached documents* to all the members of the Commission on Human Rights as official documents of the fifty-eighth session of the Commission under item 11 (d) of the provisional agenda, "Civil and political rights", including the question of "Independence of the judiciary, administration of justice, impunity".

(Signed): Najat AL-HAJJAJI
Ambassador
Permanent Representative

* Reproduced as received, in the languages of submission only.

Report on, and evaluation of, the Lockerbie Trial conducted by the special Scottish Court in the Netherlands at Kamp van Zeist by Dr. Hans Köchler, University Professor, international observer of the International Progress Organization nominated by United Nations Secretary-General Kofi Annan on the basis of Security Council resolution 1192 (1998).

Santiago de Chile, 3 February 2001/P/HK/17032

The undersigned observed the proceedings of the High Court of Justiciary at Kamp Zeist (Netherlands) since the beginning of 5 May 2000 until the announcement of the verdict and sentence in the causa *Her Majesty's Advocate v Abdelbasset Ali Mohamed Al Megrahi and Al Amin Khalifa Fhimah* on 31 January 2001. He regularly attended the sessions of the Court repeatedly met with the prosecution and defense teams, interviewed the Registrar and staff members of the Scottish Court Service at Kamp van Zeist , inspected HM Prison Zeist, met with the Governor and Deputy Governor of HM Prison Zeist and with the Chief of the Scottish Police at Kamp van Zeist. He interviewed the two accused Libyan nationals at the beginning of the trial and again – in separate meetings – after the passing of the verdict and sentence on 31 January 2001. All meetings were arranged through the Scottish Court Service. The undersigned further had access to the complete transcripts of the Court's proceedings and exchanged notes with the additional international observer of the International Progress Organization, Mr. Robert Thabit Esq.

On the basis of his first exploratory visit to Kamp van Zeist and of the interview with the two accused, the undersigned, in May 2000, sent a confidential message to the Secretary General of the United Nations. He made no public comments during the entire period of the trial and did no seek a meeting with the panel of judges, Lord Sutherland, Lord Coulsfield and Lord Maclean. He exercised his observer mission on the basis of respect of the constitutional independence of the judiciary and interpreted his mission – in absence of any specific description of the tasks of international observers in the respective Security Council resolution - in the sense of evaluating the aspects of due process and fairness of the trial. He reached agreement on the nature of this observer mission with the additional observer of the International Progress Organization, Mr. Robert Thabit.

Based on his observations during the entire period of the trial and on the information obtained in the numerous meetings with the protagonists of the trial mentioned above, the undersigned presents the following evaluation in regard to the aspect of due process and the question of the fairness of the trial :

1. All administrative aspects of the trial were handled with great care, efficiency and professionalism by the staff of the Scottish Court Service at Kamp van Zeist. Apart from minor problems with simultaneous interpretation at the beginning of the trial, here were no major weaknesses that might have affected the fairness of the proceedings. The problems of interpretation were solved in a satisfactory manner. The Scottish Court Service did its best to assist the undersigned in the accomplishment of his observer mission.

2. The circumstances of detention of the two accused at Her Majesty's Prison Zeist were in conformity with national legal requirements and international legal and human rights standards. According to the information given by the accused in a private interview with the undersigned, no people had access to them without their consent. In particular, the medical services and the medical care for the second accused (who needs permanent medication) were up to the required standard. Upon their special request, the undersigned sent a note about his meeting with the accused in May 2000 and conveyed their concerns in regard to certain political aspects of the United Nations arrangements and conditions for their coming to the Netherlands to the Secretary General of the United Nations. The Governor of HM Prison Zeist forwarded the undersigned's confirmation note on the forwarding of this message to the two accused. The Prison administration was fully co-operative in regard to the undersigned's requests in the exercise of his observer mission.

3. The extraordinary length of detention of the two suspects/accused from the time of their arrival in the Netherlands until the beginning of the trial in May 2000 has constituted a serious problem in regard to the basic human rights of the two Libyan nationals under general European standards, in particular those of the European Convention on Human Rights. In general, the highly political circumstances of the trial and special security considerations related to the political nature of the trial may have had a detrimental effect on the rights of the accused, in particular in regard to the duration of administrative detention.

4. As far as the material aspects of due process and fairness of the trial are concerned, the presence of at least two representatives of a foreign government in the courtroom during the entire period of the trial was highly problematic. The two state prosecutors from the US Department of Justice were seated next to the prosecution team. They were not listed in any of the official information documents about the Court's officers produced by the Scottish Court Service, yet they were seen talking to the prosecutors while the Court was in session, checking notes and passing on documents. For an independent observer watching this from the visitor's gallery this created the impression of "supervisors" handling vital matters of the prosecution strategy and deciding, in certain cases, which documents (evidence) were to be released in open court or what parts of information contained in a certain document were to be withheld (deleted).

5. This serious problem of due process became evident in the matter of the CIA cables concerning one of the Crown's key witnesses, Mr. Giaka. Those cables were initially dismissed by the prosecution as "not relevant" but proved to be of high relevance when finally (though only partially) released after a move from the part of the defense. Apart from this specific aspect – that seriously damaged the integrity of the whole legal procedure – , it has become obvious that the presence of representatives of foreign governments in a Scottish courtroom (or any courtroom, for that matter) on the side of the prosecution team jeopardizes the independence and integrity of legal procedures and is not in conformity with the general standards of due process and fairness of the trial. As has become obvious to the undersigned, this presence has negatively impacted on the Court's ability to find the truth; it has introduced a political element into the proceedings in the courtroom. This presence should never have been granted from the outset.

6. Another, though less serious, problem in regard to due process was the presence of foreign nationals on the side of the defense team in the courtroom during the whole period of the trial. Apart from the presence of an Arab interpreter (which was perfectly reasonable under aspects of fairness and efficiency of the proceeding), the presence of a Libyan lawyer who had held high posts in the Libyan government and who represented the Libyan Jamahiriya in its case v the United States and the United Kingdom at the International Court of Justice gave the trial a political aspect that should have been avoided by decision of the panel of judges. Though Mr. Maghour acted officially as Libyan defense lawyer for the accused Libyan nationals and although he was not seen by the undersigned as interacting with the Scottish defense lawyers during court proceedings, he had to be perceived as a kind of liaison official in a political sense. It has to be noted that the original Libyan defense lawyer, Dr. Ibrahim Legwell (chosen by the two suspects long before their transfer to the Netherlands) , resigned under protest when the Libyan government introduced Mr. Maghour as new defense lawyer for the two accused. In sum , the presence of *de facto* governmental representatives of both sides in the courtroom gave the trial a highly political aura that should have been avoided by all means, at least as far as the actual proceedings in the courtroom were concerned. Again, as to the undersigned's knowledge, the presence of foreign nationals on the side of the defense team was mentioned in no official briefing document of the Scottish Court Service.

7. It was a consistent pattern during the whole trial that – as an apparent result of political interests and considerations – efforts were undertaken to withheld substantial information from the Court. One of the most obvious cases in point was that of the former Libyan double agent, Abdul Majid Giaka, and the CIA cables related to him , some of the cables were finally produced after the insistence from the part of the defense, some were never made available. The Court was apparently content with this situation, which is hard to understand for an independent observer. It may never be fully known up to which extent relevant information was hidden from the Court. The most serious case, however, is related to the special defense launched by defense attorneys Taylor and Keen. It was officially stated by the Lord Advocate that substantial new information had been received from an unnamed foreign government relating to the defense case. The content of this information was never revealed, the requested specific documents were never provided by a foreign government. The alternative theory of the defense – leading to conclusions contradictory to those of the prosecution – was never seriously investigated. Amid shrouds of secrecy and "national security" considerations, that avenue was never seriously pursued – although it was officially declared as being of major importance for the defense case. This is totally incomprehensible to any national observer. By not having pursued thoroughly and carefully an alternative theory, the Court seems to have accepted that the whole legal process was seriously flawed in regard to the requirements of objectivity and due process.

8. As a result of this situation, the undersigned has reached the conclusion that foreign governments or (secret) governmental agencies may have been allowed, albeit indirectly, to determine, to a considerable extent, which evidence was made available to the Court.

9. In the analysis of the undersigned, the strategy of the defense team by suddenly dropping its "special defense" and canceling the appearance of almost all defense witnesses (in spite of the defense's ambitious announcements made earlier during the trial) is totally incomprehensible; it puts into question the credibility of the defense's actions and motives. In spite of repeated request of the undersigned, the defense lawyers were not available for comments on this particular matter.

10. A general pattern of the trial consisted in the fact that virtually all people presented by the prosecution as key witnesses were proven to lack credibility to a very high extent, in certain cases even having openly lied to the Court. Particularly as regards Mr. Bollier and Mr. Giaka, there were so many inconsistencies in their statements and open contradictions to statements of other witnesses that the resulting confusion was much greater that any clarification that may have been obtained from parts of their statements. Their credibility as such was shaken. It seems highly arbitrary and irrational to choose only parts of their statements for the formulation of a verdict that requires certainly "beyond any reasonable doubt".

11. The air of international power politics is present in the whole verdict of the panel of judges. In spite of the many reservations in the Opinion of the Court explaining the verdict itself, the guilty verdict in the case of the first accused is particularly incomprehensible in view of the admission by the judges themselves that the identification of the first accused by the Maltese shop owner was "not absolute" (formulation in Par.89 of the Opinion) and that there was a "mass of conflicting evidence" (*ibid.*). The consistency and legal credibility of the verdict is further jeopardized by the fact that the judges deleted one of the basic elements of the indictment, namely the statement about the two accused having induced on 20 December 1988 into Malta airport the suitcase that was supposedly used to hide the bomb that exploded in the Panam jet.

12. Furthermore, the Opinion of the Court seems to be inconsistent in a basic respect: while the first accused was found "guilty", the second accused was found "not guilty". It is to be noted that the judgement, in the latter's case, was <u>not</u> "not proven", but "not guilty". This is totally incomprehensible for any national observer when one considers that the indictment in its very essence was based on the joint action of the two accused in Malta.

13. The Opinion of the Court is exclusively based on circumstantial evidence and on a series of highly problematic inferences. As to the undersigned's knowledge, there is not one single piece of material evidence linking the two accused to the crime. In such a context, the guilty verdict in regard to the first accused appears to be arbitrary, even irrational. This impression is enforced when one considers that the actual wording of the larger part of the Opinion of the Court points more into the direction of a "not proven" verdict.

The arbitrary aspect of the verdict is becoming even more obvious when one considers that the prosecution, at a rather late stage of the trial decided to"split" the accusation and to change the very essence of the indictment by renouncing the identification of the second accused as a member of Libyan intelligence so as to actually disengage him from the formerly alleged collusion with the first accused in the supposed perpetration of the crime. Some light is shed on this procedure by the otherwise totally incomprehensible "not guilty" verdict in regard to the second accused.

14. This leads the undersigned to the suspicion that political considerations may haven been overriding a strictly judicial evaluation of the case and thus may have adversely affected the outcome of the trial. This may have a profound impact on the evaluation of the professional reputation and integrity of the panel of three Scottish judges. Seen from the final outcome, a certain coordination of the strategies of the prosecution, of the defense, and of the judges' considerations during the later period of the trial is not totally unlikely. This however, – when actually proven – would have a devastating effect on the whole legal process of the Scottish Court in the Netherlands and on the legal quality of its findings.

15. In the above context, the undersigned has reached the general conclusion that the outcome of the trial may well have been determined by political considerations and may to a considerable extent have been the result of more or less openly exercised influence from the part of actors outside the judicial framework – facts which are not compatible with the basic principle of the division of powers and with the independence of the judiciary, and which put in jeopardy the very rule of law and the confidence citizens must have in the legitimacy of state power and the functioning of the state's organs – whether on the traditional national level or in the framework of international justice as it is gradually being established through the United Nations Organisation.

16. On the basis of the above observations and evaluation, the undersigned has – to this great dismay – reached the conclusion that the trial, seen in its entirety, was not fair and was not conducted in an objective manner. Indeed there are many more questions and doubts at the end of the trial than there were at its beginning. The trial has effectively created more confusion than clarity and no national observer can make any statement on the complex subject matter " Beyond any reasonable doubt". Irrespective of this regrettable outcome, the search for the truth must continue. This is the requirement of the rule of law and the right of the victims' families and of the international public.

17. The international observer may draw one general conclusion from the conduct of the trial, which allows to formulate a general maxim applicable to judicial procedures in general : proper judicial procedure is simply impossible if political interests and intelligence services – from which ever side succeed in interfering in the actual conduct of a court. We should remember the wisdom of Immanuel Kant who – in his treatise on eternal peace " Zum ewigen Frieden), elaborating on the essence of the rule of law – unambiguously stated that secrecy is never compatible with a republican system determined by the rule of law. The purpose of intelligence services – from whichever side – lies

in secret action and deception, not in the search for truth. Justice and the rule of law can never be achieved without transparency.

18. Regrettably – through the conduct of the Court, disservice has been done to the important cause of international criminal justice. The goals of criminal justice on an international level cannot be advanced in a context of power politics and in the absence of an elaborate division of powers. What is true on the national level, applies to the transnational level as well. No national court can function if it has to act under pressure from the executive power and if vital evidence is being withheld from it because of political interests. The realities faced by the Scottish Court in the Netherlands have demonstrated this truth in a very clear and dramatic fashion – the political impact stemming, in this particular case, from highly complex web of national and transnational interests related to the interaction among several major actors on the international scene.

19. The undersigned would like to express his humble opinion – or hope, for that matter – that an appeal , if granted, will correct the deficiencies of the trial as explained above. It goes without saying that all will depend on the integrity and independence of the five judges of an eventual Court of Appeal operating under Scottish law.

20. The above evaluation should in no way be interpreted as to diminish the idealistic contribution and commitment of so many civil servants of the Scottish Court Service and the Scottish police authorities who guaranteed the smooth functioning of the whole court operation at Kamp van Zeist under difficult and truly extraordinary circumstances.

The undersigned would like to emphasize that the above remarks constitute a personal evaluation himself alone and that he is only bound by the dictates of his conscience; as an international citizen committed to the goals and principles of the United Nations Charter, he does not accept any pressure or influence from the part of any government, political party or interest group.

Truth in a matter of criminal justice has to be found through a transparent inquiry that will only be possible if all considerations of power politics are put aside. The rule of law is not compatible with the rules of power politics: justice cannot be done unless in complete independence, based on reason and the unequivocal commitment to basic human rights.

Dr. Hans Köchler

No Z 00-87.218 FS-P-F

DF

No 1414

13 Mars 2001

M. COTTE président,

REPUBLIQUE FRANCAISE

AU NOM DU PEUPLE FRANÇAIS

La COUR DE CASSATION, CHAMBRE CRIMINELLE, en son audience publique tenue au Palais de justice à PARIS, a rendu l'arrêt suivant :

Statuant sur le pourvoi formé par :

- LE PROCUREUR GENERAL PRES LA COUR D'APPEL DE PARIS,

contre l'arrêt de la chambre d'accusation de ladite cour d'appel, en date du 20 octobre 2000, qui a confirmé l'ordonnance du juge d'instruction disant y avoir lieu à informer sur la plainte de l'association SOS ATTENTATS et de Béatrice BOERY, épouse CASTELNAU d'ESNAULT, contre Mouammar KHADAFI, du chef de complicité de destruction d'un bien par l'effet d'une substance explosive ayant entraîné la mort d'autrui, en relation avec une entreprise terroriste :

La COUR, statuant après débats en l'audience publique du 27 février 2001 où étaient présents : M. Cotte président, Mme Chanet conseiller rapporteur, MM. Joly, Le Gall, Farge, Mme Anzani, M. Pelletier, Mme Mazars, MM. Palisse, Arnould, Mme Koering-Joulin, M. Corneloup conseillers de la chambre, M. Despornes, Mme Karsenty, M. Sassoust, Mme Caron conseillers référendaires ;

Avocat général : M. Launay ;

Greffier de Chambre : Mme Nicolas ;

Sur le rapport de Mme le conseiller CHANET, les observations de Me BOUTHORS et de la société civile professionnelle PIWNICA et MOLINIÉ, avocats en la Cour et les conclusions de M. l'avocat général LAUNAY ;

Vu l'ordonnance du président de la chambre criminelle en date du 22 novembre 2000 prescrivant l'examen immédiat du pourvoi ;

Vu les mémoires produits en demande et en défense ;

Sur le moyen unique de cassation, pris de la violation du droit pénal coutumier international relatif à l'immunité de juridiction reconnue aux chefs d'Etat étrangers ;

Vu les principes généraux du droit international ;

Attendu que la coutume internationale s'oppose à ce que les chefs d'Etat en exercice puissent, en l'absence de dispositions internationales contraires s'imposant aux parties concernées, faire l'objet de poursuite devant les juridictions pénales d'un Etat étranger ;

Attendu que l'association SOS Attentats et Béatrice Castelnau d'Esnault ont porté plainte avec constitution de partie civile du chef de complicité de destruction d'un bien par l'effet d'une substance explosive ayant entraîné la mort d'autrui, en relation avec une entreprise terroriste, contre Mouammar Khadafi, chef d'Etat en exercice de la Jamahiriya Arabe Libyenne, à qui elles reprochent son implication dans l'attentat commis le 19 septembre 1989 contre un avion DC 10 de la compagnie UTA, lequel, en explosant au-dessus du Niger, a causé la mort de 170 personnes, plusieurs d'entre elles étant de nationalité française ;

Attendu que, pour confirmer l'ordonnance du juge d'instruction disant y avoir lieu à informer, nonobstant des réquisitions contraires du ministère public, les juges du second degré retiennent que, si l'immunité des chefs d'Etats étrangers a toujours été admise par la société internationale, y compris la France, aucune immunité ne saurait couvrir les faits de complicité de destruction d'un bien par l'effet d'une substance explosive ayant entraîné la mort d'autrui, en relation avec une entreprise terroriste ;

Mais attendu qu'en prononçant ainsi, alors qu'en l'état du droit international, le crime dénoncé, quelle qu'en soit la gravité, ne relève pas des exceptions au principe de l'immunité de juridiction des chefs d'Etat étrangers en exercice, la chambre d'accusation a méconnu le principe susvisé ;

D'où il suit que la cassation est encourue ; qu'elle aura lieu sans renvoi, la Cour de Cassation étant en mesure d'appliquer la règle de droit et de mettre fin au litige ainsi que le permet l'article L. 131-5 du Code de l'organisation judiciaire ;

Par ces motifs,

CASSE et ANNULE, en toutes ses dispositions, l'arrêt de la chambre d'accusation de la cour d'appel de PARIS, en date du 20 octobre 2000 ;

DIT n'y avoir lieu à informer ;

DIT n'y avoir lieu à renvoi ;

ORDONNE l'impression du présent arrêt, sa transcription sur les registres du greffe de la chambre de l'instruction de la cour d'appel de PARIS, sa mention en marge ou à la suite de l'arrêt annulé ;

Ainsi fait et jugé par la Cour de Cassation, chambre criminelle, et prononcé par le président le treize mars deux mille un ;

En foi de quoi le présent arrêt a été signé par le président, le rapporteur et le greffier de chambre ;

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 24 October 2001 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Israeli occupation forces have committed yet another massacre to be added to the long list of their massacres against the Palestinian people.

At 2 a.m. today, the Israeli occupation forces stormed into Beit Rima town, armed to the teeth, opening artillery fire against centres of the National Security and residential homes, killing 10 Palestinians and wounding several others.

In addition, and as they always do when they perpetrate their massacres and put under curfew Palestinian areas, the Israeli occupation forces have forbidden access of ambulances to the town to rescue the wounded who are still desperately trying to reach hospitals.

I would be grateful if you would have this letter distributed as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 8.

Signed: Nabil RAMLAWI
Ambassador
Permanent Observer

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 24 October 2001 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

Israel is escalating its war against the Palestinian people which started on 28 September 2000. Since the early hours of Thursday 18 October, the Israeli military occupation forces have surrounded and occupied a number of Palestinian controlled areas, using heavy artillery, tanks, troop carriers, bulldozers and helicopters, causing vast destruction to Palestinian property, and killing and wounding scores of Palestinian civilians. Furthermore, Israel is persisting in its policy of extrajudicial executions and assassination of Palestinian personalities. All of which constitute flagrant breaches of the principles of human rights, particularly the right to life, and grave violations of the principles of international humanitarian law and international law.

This Israeli aggression, represented by the Israeli military incursion into Palestinian towns and villages, together with its consequences represented by imposing severe collective punishment with the aim of pushing Palestinians towards a humanitarian crisis and starvation, wilful killing of civilians, house demolition, shelling of schools, mosques, churches and hospitals with artillery fire, is still going on to this day.

Israeli forces have killed, only during the period from 18 to 21 October 2001, 26 Palestinians and have injured over 200 others. Many of those killed were uninvolved in clashes.

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In Jenin, more than 20 tanks entered the city, accompanied by helicopters, and shelled residential buildings. A teenager, Reham Ward, was killed in cold blood when Israeli occupation forces shelled her school in Al-Almaniya neighbourhood in Jenin City. Eleven other girls under the age of 12 were also injured in the attack and taken to the Jenin Hospital.

Israeli tanks and armoured personnel carriers have also entered into and surrounded Tulkarm, Qalqilya and Nablus. Each of these cities have been cut off, and shelling has killed both civilians and members of the Palestinian police forces in Tulkarm and Qalqilya: 53-year-old Mustafa Mahmoud Salih Zitawiy and 33-year-old Mahir Abu Hasna were killed in Tulkarm; Mustafa Noufil and Samir Yusif Shawahniy were killed in Qalqilya and five others were injured, two of whom are in critical condition.

Bethlehem and its surrounding villages have been completely closed off, and Israeli tanks and troops are shooting indiscriminately at hospitals and open markets heavily populated with the most vulnerable civilians.

Between Bethlehem and Beit Sahour, an assassination killed one Palestinian activist and two of his companions. They were killed on the evening of Thursday, 18 October, when the Suzuki jeep they were in exploded; the victims were Atef Abayat, 32, Jamal Abayat, 35 and Isa Abayat, 28.

In al-Khader, a 35-year-old mother of six died after being shot in the chest. Mariam Subeih was fatally shot in the abdomen by an explosive "dum-dum" bullet. "Dum-dum" bullets are internationally illegal because of the indiscriminate harm they cause.

Nineteen-year-old Johnny Josef Thaljiye was shot in the grounds of the Church of the Nativity in Bethlehem.

In Beit Jala a 34-year-old woman, Rehab Nofal, and her unborn baby died on 19 October, when soldiers detained her at a checkpoint, refusing to let her through to a hospital despite the fact that she was in labour. Rehab Nofal died after she had waited in pain for over two hours. Her child could not be saved either. A doctor was also seriously injured while on duty in the Husseini Hospital in Beit Jala when the hospital came under attack. In Beit Jala also, 22-year-old Rania Kharufa was mortally wounded by Israeli fire on Saturday, 20 October.

Thirteen-year-old Basil Al-Mubasher was murdered in Khan Younis on 19 October, as an Israeli tank shell was fired from the illegal settlement of Neve Dekalim, directly hitting the child, instantly killing him and tearing his body apart.

Thirty-nine-year-old Aisha Abu Odeh, mother of eight, was killed by shrapnel from Israeli tank fire while visiting her mother in Aida Camp near Bethlehem.

Fifteen-year-old Yousef Muhammad Al Bayat was killed in Bethlehem by Israeli shelling during the invasion.

On 20 October, 20-year-old Rania Murra left her home to get milk for her 2-year-old daughter Randa and was shot to death by Israeli snipers.

On Sunday, 21 October, two more Palestinians were killed in Bethlehem, during the continuing Israeli attack: 32-year-old Muhammad Suleiman Baraqa'a was killed by shrapnel during Israeli shelling of Azza Refugee Camp in the Bethlehem area. Also near to Azza Refugee Camp, an Israeli sniper shot 45-year-old Nahid Hussein Al Joujou, killing him instantly.

The Israeli army has also imposed curfews on Habla, Jayta, Kufr Qaddum and Azzun 'Atma villages in the area, adding to the thousands of civilians who have already become prisoners in their own homes. Thus, the whole Palestinian territory has fallen under the Israeli military occupation.

Each day, the Palestinian people wake up only to resume the hardship they have been through all this past year. Not a single day goes without the death and injury of more Palestinian civilians. Not a single day goes without scores of Palestinians burying one or more of their beloved.

In the light of these circumstances, we appeal once more to Your Excellency, and through you to the international community, to intervene and urge Israel to immediately put an end to its war against the Palestinian people and to stop the humanitarian tragedy the Palestinian people are going through.

I would be grateful if you would have this letter distributed as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 8.

Signed: Nabil RAMLAWI
Ambassador
Permanent Observer

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 25 October 2001 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

With reference to our last letter to Your Excellency, dated 24 October 2001, concerning the last massacre perpetrated by the Israeli occupation forces against the Palestinian unarmed civilian population in Beit Rima village north of Ramallah in the Palestinian occupied West Bank, and as a result of the continuation of this Israeli massacre all during the late hours of yesterday, the number of victims increased to 21 martyrs in addition to several more wounded.

This massacre comes as a continuation of the unlimited list of massacres at the hands of the Israeli military occupation forces against the Palestinian people in the occupied Palestinian territory. It also constitutes new evidence of the flagrant violation by the Israeli Government, as well as its occupation forces, of the principles of human rights as laid down in the Universal Declaration of Human Rights, the two International Covenants on Human Rights, international humanitarian law, the Fourth Geneva Convention and particularly the Convention on the Prevention and Punishment of the Crime of Genocide.

I would be grateful if you would have this letter distributed as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 8.

(Signed): Nabil RAMLAWI
Ambassador
Permanent Observer

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Note verbale dated 7 December 2001 from the Permanent Mission of Israel to the United Nations Office at Geneva addressed to the secretariat of the Commission on Human Rights

The Permanent Mission of Israel to the United Nations Office and other International Organizations in Geneva presents its compliments to the secretariat of the Commission on Human Rights and has the honour to enclose herewith Israel's response to the report of Mr. John Dugard, Special Rapporteur of the Commission on Human Rights dealing with the West Bank and Gaza.*

The Permanent Mission of Israel requests that this document be circulated as an official document of the fifty-eighth session of the Commission on Human Rights under item 8 of the provisional agenda.

* Reproduced in the annex as received, in the language of submission only.

GE.01-16528 (E) 150102

Annex

Response of Israel to the Report submitted by Professor John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2a and 2001/8 and Economic and Social Council decision 2001

General

Israel feels compelled to respond to the Report submitted by Professor John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2a and 2001/8 and Economic and Social Council decision 2001.

The Report submitted by the Special Rapporteur is a clearly political document. To his credit, the Special Rapporteur makes no attempt to hide his political agenda, and even states with pride that his aim is "to restore occupation to the center of the stage."

The thesis advanced by the Special Rapporteur is that the occupation of the territories is the root of all aspects of the current conflict, and that while 'immediate causes' may be found for violence and terrorism, the 'ultimate explanation is occupation'.

In advancing this thesis the Special Rapporteur disregards the concerted attempts by Israel to end the current situation, most notably its far reaching peace proposals that were rejected out of hand by the Palestinian side, and repeatedly asserts that the measures taken by Israel to protect civilian lives are more serious violations of international law than the terrorist acts which threaten them.

The result, regrettably, is a document which is likely to give succor to extremists in the Palestinian camp and to further convince them that the path of violence will generate more support from the international community than the path of negotiation.

Mandate of the Special Rapporteur

The Special Rapporteur opens the substantive part of his report by defending his mandate. In doing so, he places himself at odds not only with all those states that have pointed out its obvious failings but also with numerous previous Rapporteurs who have reached the conclusion (several of them resigning) that the mandate is obsolete, one-sided and inapplicable to the current situation.

The Special Rapporteur's comments in this regard need to be addressed in some detail since they attempt not only to justify the mandate, but also to give it an unprecedently expansive interpretation.

In seeking to defend his mandate, the Special Rapporteur has a difficult task, particularly since it violates the UN Charter principle of the sovereign equality of states in so many respects. Most significantly:

- It prejudges the issues that the Special Rapporteur is supposed to investigate, concluding that Israel is guilty of committing violations before considering any evidence.

- It singles out Israel for criticism, while failing to allow the Rapporteur to address violations and provocations by the other party to the conflict.

- It is unique among country specific mandates for being open-ended, and unlike other mandates, fails to allow for any periodic review to reflect changes in circumstances.

- It fails to take any note of the significant changes in the region, most particularly the transfer of territory and responsibilities to the Palestinians as a result of which over 98% of Palestinian now live under Palestinian and not Israeli administration.

The logic of the Special Rapporteur's response to these failings is difficult to follow but appears to comprise three basic assertions.

First assertion: *A distinction must be made between mandates in the context of military occupation and those without regard to military occupation.*

The Special Rapporteur alleges that since the mandate requires an investigation limited to "the context of military occupation" the Rapporteur has no need to relate to changing circumstances or the transfer of responsibilities to the Palestinian side.

This assertion, which is crucial to the Rapporteur's defence (indeed he admits that, were the mandate not restricted to the context of occupation "there would be substance in this criticism" and the mandate "would be unfair"), is hard to sustain. The Special Rapporteur bases his argument on the fact that the Resolution 1993/2A requires him to investigate violations "until the end of the Israeli occupation". In fact, contrary to the Special Rapporteur's assertion, this phrase does not appear in the paragraph of the resolution dealing with the issues to be investigated (4(a)) but rather in 4(c) which sets the time frame in which the Special Rapporteur is to report to the Commission. Further, the phrase makes no reference to the ***context*** of occupation, as asserted by the Special Rapporteur, but merely states the time frame for his reporting obligations. Finally, and most significantly, the Special Rapporteur fails to explain how the phrase 'within the context of military occupation' - even if it did appear in the resolution, and in the appropriate paragraph - would justify ignoring the transfer of powers and territory from Israel to the Palestinians. To the contrary, the question of whether powers have been transferred from an occupying power to the local population is, as described below, one of the key factors in determining whether there is indeed a situation of occupation.

Second Assertion: ***There is a close connection between international humanitarian law and human rights, so violations of the former cannot be examined without reference to the latter.***

This assertion is highly questionable in both law and in logic. In law, it ignores the longstanding distinction between those instances in which humanitarian law is applicable and those in which the governing norms are those of human rights. While there is clearly a relationship between the two, and indeed many fundamental rights are protected by both frameworks, it remains generally accepted they are codified in separate instruments, applicable in different circumstances, and subject to separate international regimes.

In logic this argument is also unconvincing. The fact of a 'close connection', even if it exists, does not imply that the area of humanitarian law cannot be investigated without extending the mandate of the Special Rapporteur to cover human rights law – an expansion which, is should be noted, goes beyond anything envisaged by any of his predecessors.

The arbitrariness of the direction in which the Special Rapporteur seeks to expand the mandate is striking; on the one hand Israel must be scrupulously investigated, not only for any humanitarian violations but also - because these are "closely connected"- for any human rights violations, but on the other the Special Rapporteur sees no "close connection" between Israeli measures and the Palestinian violations to which they are a response.

Finally, it should be noted that the Special Rapporteur's approach not only ensures that Israel remains responsible for behavior conducted in areas and spheres of authority no longer in its control, but also effectively absolves the Palestinian side for its failure to fulfil its own responsibilities in this regard.

Third assertion: *The length of the occupation justifies unique treatment by the Commission.*

The Special Rapporteur states that the "unusual" nature of the mandate, and its expansion to cover the purview of human rights, is justified by the fact that it is a "prolonged military occupation". No support is given for this assertion. In fact, the law of occupation envisages that in cases of prolonged occupation the occupying power will not become more bound, but less bound by the legal regime. The official ICRC Commentary to the IV Geneva convention describes a situation of prolonged occupation which accurately reflects the process of transfer of powers that Israel has engaged in as part of the peace process:

> If the occupation were to continue for a very long time after the general cessation of hostilities, a time would doubtless come when the application of the convention was no longer justified, especially when if most of the governmental and administrative duties carried out at one time by the Occupying Power had been handed over to the authorities of the occupied territory. (ICRC commentary to IVth Geneva Convention, p 62).

In the case of the transfer of powers to the occupied population, continues the Commentary, " the occupying power would only be bound in as far as it continued to exercise governmental functions."

Accordingly, far from providing a basis for expanding his mandate, the prolonged occupation on which the Special Rapporteur bases his argument suggests the opposite. The Special Rapporteur, however, finds himself in a circular paradox of his own making: the law of occupation provides that one can only determine the extent of occupation by considering the transfer of powers and responsibilities to the occupied population; but the Special Rapporteur is unable to do this because, so he asserts, this falls outside his mandate which deals only with the "context of occupation".

The "root cause of the conflict"

Apparently unsatisfied with broadening his one-sided mandate to include the entire realm of human rights law, the Special Rapporteur goes on to offer his personal interpretation of the root cause of the conflict. The assertions he makes in this regard go way beyond the broadest conceivable definition of his mandate, which is, as noted, to investigate violations, not pass judgement on the sources of the conflict.

Further, and far more seriously, these assertions are inaccurate in the extreme.

The Special Rapporteur's account of the history of the conflict begins in 1967, when "Israel occupied the West Bank and the Gaza Strip". This point of departure conveniently ignores decades of Arab hostility to the State of Israel prior to 1967, and, most significantly, the rejection of General Assembly resolution 181("the partition resolution") by Israel's Arab neighbors and their concerted attack on the fledgling state of Israel in what UN Secretary General Trygvie Lee termed "the first instance of armed aggression since the end of the second world war". Nor does he see fit to refer to the context of Israel's coming into control of the territories in the face of another clear attempt to ensure Israel's destruction initiated by its Arab neighbors. Even more striking, in view of his assertion that the occupation is the root of all conflict between Israel and the Palestinians, is his failure to mention the Palestinian calls for the destruction of Israel prior to 1967. These include calls to destroy the state of Israel through armed struggle contained in the Palestinian National Covenant adopted *in 1964*, three years prior to the 1967 war which led, in the Special Rapporteur's view, to the creation of the conflict.

Moreover, the Special Rapporteur who found within his mandate the authority to discuss the roots of the conflict, is strangely silent on attempts to resolve it. No mention at all is made of the repeated attempts made by Israel to reach a negotiated solution, including its far-reaching proposals last year at Camp David and in subsequent negotiations, which would have ended the issues of occupation and settlements. The Palestinian side, it will be recalled, rejected not just these proposals, but the entire process of negotiation and resorted instead to incitement, terrorism and violence. The absence of any reference to these events is all the more striking in view of the Special Rapporteur's declaration that "peace will not be restored to the region until there is clear evidence of an intention on the part of the occupying power to put an end to the occupation.".

The existence of a state of occupation and its legality

Though there are numerous hints and implications to the contrary, the Special Rapporteur is, in the final analysis, forced to admit that there is nothing inherently illegal in a state of military occupation. While occupation cannot in itself acquire sovereign rights, where territory has been taken by a state in an act of self-defense, the continued control of territory until such time as the threat has been removed is perfectly acceptable under international law. As the Special Rapporteur himself notes, "military occupation is a temporary phenomenon pending an acceptable peace settlement".

The Special Rapporteur does however criticize Israel for failing to apply the relevant provisions of international law dealing with occupied territories. In particular, he devotes considerable attention to the question of the applicability of the Fourth Geneva Convention in the territories in question.

The Special Rapporteur refers to the doubts raised by Israel as to whether the IVth Geneva Convention can be considered applicable to the West Bank and Gaza Strip since, on a strict reading of Article 2 of the Convention, this would imply that the former occupants of these areas, Jordan and Egypt, were actually legitimate sovereigns. In this regard the Special Rapporteur argues that Israel fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory. But what the Special Rapporteur fails to mention is that it is exactly this concern for the interests of the population which led Israel, despite its legal doubts as to the *de jure* applicability of the Convention, to declare that it would apply the humanitarian provisions of the Convention to the territories. Nor does he note that the implementation of these provisions by Israel in practice is, in fact, the only time that they have been applied in the history of the Convention.

As regards Israel's argument that it cannot be considered to occupy areas which it has transferred to the Palestinians and over which it has not effective control, the Special Rapporteur declares this "unacceptable" on the grounds that the test for the application for the legal regime of occupation is not effective control but whether the occupying power "has the ability to exercise such power". This assertion, which would seem to imply that any state is responsible for the behavior of any weaker neighbor, since it could in theory invade and rectify the situation, has no legal basis whatsoever. As authority the Special Rapporteur cites the Nuremberg Military Tribunal Hostages Case, presumably referring to the Court's observation concerning Greece and Yugoslavia, that the fact that "partisans were able to control sections of these countries at various times" did not deprive the German forces of their status as an occupant. One would have thought that the distinction between occasional pockets of partisan control and the negotiated transfer of territories to an elected Palestinian authority, would have been sufficiently clear to the Special Rapporteur. But even were it not, a cursory reading of the judgement would have shown that it restates, with approval, the 1907 Hague Regulations, which are a clear an succinct statement of international law in this regard:

> Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

Further support, if required, for the proposition that a state can only be held responsible for behavior within territory under its actual control is provided by the IVth Geneva Convention. As noted above, Article 6 envisages a situation in which powers are gradually transferred to the local population. In such a case, despite the fact that the Occupying Power could presumably recapture these powers by force, the Convention states clearly that it is only bound by those powers it continues to exercise:

> In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however the Occupying Power shall be bound for the duration of the occupation, ***to the extent that such Power exercises the functions of government in such territory***, by the provisions of the following articles of the Present Convention....(*emphasis added*)

The Convention, as a rule, ceases to apply one year after the end of military operations. Certain provisions, listed in Article 6, continue to bind the Occupying Power but only "to the extent that such power exercises the functions of government in such territory".

Indeed this has been the approach adopted both in law and in practice by the International Committee of the Red Cross. Following Israel's withdrawal from the Gaza Strip and Jericho Area in 1994, but prior to its subsequent redeployments in the West Bank, the ICRC's legal advisor, Dr. Hans-Peter Gasser, speaking to the International Colloquium on Human Rights in Gaza, addressed the complex question of the application of international humanitarian law to the territories following Israel's withdrawal. His conclusions with regard to the Gaza Strip and the Jericho Area at that time, are appropriate to the other areas from which Israel subsequently redeployed.

After noting that Gaza and Jericho were no longer "actually placed under the authority of the hostile army" and so not occupied territory as defined in the 1907 Hague Regulations, he went on to conclude that these areas were no longer subject to international humanitarian law:

> The ICRC has no reason to be there [in the Gaza Strip and Jericho Area] or to monitor compliance with international rules ***which do not apply.***" (*emphasis added*)

In practice too, the policy of the ICRC has been to treat areas from which Israel has redeployed not as occupied territory, but as what they indeed are: areas under Palestinian territorial jurisdiction and effective control.

Finally, in this regard, it should be noted that the Special Rapporteur compounds his error, by asserting that the Oslo Accords "leave Israel with the ultimate legal control over the entire OPT and ... for political reasons it has generally chosen not to exercise this control over the AA zones [sic]". While the Israeli-Palestinian agreements do contain a number of provisions which permit Israel to take security measures in areas under Palestinian jurisdiction, these are limited to very

specific cases, and could not by any standard be considered tantamount to "ultimate control". The selective and inaccurate reading of the Israeli-Palestinian agreements is particularly regrettable since they are crucial to understanding the current situation.

Factual findings and conclusions

The factual findings of the Special Rapporteur are difficult to respond to, consisting as they do of largely unsubstantiated generalizations and political assertions. Additionally most of the allegations raised have been addressed by Israel in other contexts, including in the submissions by Israel to the Mitchell Committee (available at www.mofa.gov.il). Accordingly Israel will restrict itself to making a number of general observations on the Special Rapporteur's comments.

Bias in presentation of the facts

The first point to be noted in the presentation of the Special Rapporteur's findings is the persistent political bias evident in the way he chooses to present the facts. On almost every occasion that he refers to casualties, Palestinian casualties are referred to prior to Israeli casualties, while wherever a reference is made to military actions the Israeli actions are listed first. The implication, that Israel initiated actions which led Palestinian injuries, is precisely the converse of the actual situation. In almost every single one of the thousands of clashes over the past year, Israel has responded to violence instigated by the Palestinian side.

The Special Rapporteur's bias does not cease with the presentation of the facts, but extends to the motivations imputed by him to Israel. Checkpoints established by Israel in order to try to protect civilians from terrorists and car bombs, are not, the Special Rapporteur assures us, "to prevent would-be suicide bombers from crossing checkpoints" but rather " to humiliate Palestinians and put pressure on them".

Nonetheless, the Special Rapporteur is to be commended for making any reference at all to Palestinian violations. Despite his legal assertion that his mandate only permits him to consider Israeli actions, he mentions numerous Palestinian violations, including the adoption of armed force, terrorist bomb attacks, and gunfire directed at Israelis. Additionally, while he reserves the bulk of his criticism for those measures adopted by Israel in response to the violence, he notes that the threshold for an non-international armed conflict has probably been met, and that Israel "may therefore by entitled to greater latitude in the exercise of its powers".

Bias in presentation of legal conclusions

The selective nature of those principles of international law cited by the Special Rapporteur is also striking. Criticizing what he terms Israel's policy of "selected assassination", he cites provisions of humanitarian law which prohibit violence against protected persons. He fails to mention, however, those provisions which make it clear that protected persons forfeit any protection under the Conventions when they cease to be civilians and engage in the conflict. The

point has been clearly stated by the ICRC in its manual on the law of armed conflict, which states:

> Civilians are not permitted to take a direct part in hostilities and are immune from attack. If they take a direct part in hostilities they forfeit this immunity. (*ICRC Model Manual on the Law of Armed Conflict for Armed Forces*, p. 29)

This lopsided presentation of international law is a persistent theme of the report. While almost every Israel measure is categorically stated to be a violation of existing principles of international law, the Special Rapporteur finds that "the planting of bombs in public places in Israel, resulting in loss of life of innocent civilians" is merely "contrary to emerging norms [!] of international law". The conception of an international regime in which measures taken to protect civilians from terrorism are violations, while the acts of terrorism themselves are at most contrary to "emerging norms", can only be described as staggering.

Bias in presentation of recommendations

The political agenda of the Special Rapporteur is most clearly evident in his recommendations. These, as might be expected, all require unilateral Israeli concessions. As far as the Palestinians are concerned the Special Rapporteur has no expectations from them. While they "could undoubtedly help to restore confidence by taking firmer measures to prevent terrorism in Israel" [note that terrorist acts against Israelis in the territories are not included], there is no expectation that they should engage in serious negotiations "until Israel takes some action which indicates a willingness to contemplate the termination of the occupation". As noted, the Special Rapporteur chooses to make no reference to the clearest statement of Israel's willingness to terminate the current situation – the peace proposals which were rejected by the Palestinian side.

The most insistent recommendation made by the Special Rapporteur relates to Israeli settlements. The Special Reporter cites the Mitchell Report as evidence that "peace is impossible without a complete freeze on settlements". He conveniently disregards the Mitchell Framework which only contemplates such a freeze after an effective cease-fire and cooling off period. He also determines that an immediate freeze is not sufficient: "It is not enough to merely impose a freeze on settlements. Steps must start to dismantle settlements". This is also in clear disregard for the terms of the peace process, under which settlements are to be addressed in the framework or permanent statues negotiations. For the Special Rapporteur the negotiations will not start until Israel has unilaterally conceded the issues to be negotiated.

Other recommendations include a call on the High Contracting Parties to the IVth Geneva Convention to convene to censure Israel. As noted above the application of the Convention to the territories in the current situation is highly questionable, but leaving this aside, the convening of the High contracting Parties to censure the one state that has ever implemented the provisions of this convention in practice – despite the many cases of occupation in the Convention's 50 year history – is hard to square with the humanitarian principles of neutrality and impartiality.

Finally, the Special Rapporteur calls for the introduction of "monitors or peace -keepers to ensure the cease-fire holds". The fact that there is no cease–fire to monitor, or peace to keep does

not trouble the Special Rapporteur. In practice, the only step required to achieve an end to the current violence, is for the Palestinian leadership to comply with its responsibility to act against the terrorism emanating from areas under its control. Until that happens no international presence will have any effect. The Mitchell Report, recognizing the political nature of the Palestinian call for internationalization of the conflict, and refrained from recommending the introduction of an international presence. It went on to caution that such a presence could only be effective "with the consent of all of the parties involved". The Special Rapporteur, however, rephrases this as an invitation to the international community to pressure Israel "to ensure that such an agreement is forthcoming".

In short, in all of his recommendations the Special Rapporteur ignores existing agreements between the parties as to the framework and process for resolving the issues between them, and insists instead that Israel make unilateral concessions, irrespective of the terror and violence promoted by the Palestinian side, before negotiations can even get under way.

Conclusion

Israel has repeatedly stated - and been supported by numerous previous Special Rapporteur's in this respect - that there can be no value in a report pursuant to a one-sided and anachronistic mandate. The current report is the strongest possible proof of this assertion.

But the current report is worse than of no value. It is a major step backwards. At a time when the world is struggling to combat the scourge of terrorism, the Special Rapporteur remains firm in his conviction that terrorism is only the "immediate cause" of the loss of innocent life; the "ultimate explanation" is occupation. Israeli parents who have their children blown up or shot in pizza bars, shopping malls or discotheques have the comfort of knowing that the ultimate responsibility for the death of their children is not with the Palestinian terrorist who targeted them (and who, after all, only contravened an "emerging norm of international law"). True responsibility lies, the Special Rapporteur assures us, with Israel's insistence on holding on to territory from which it has been repeatedly attacked, until its peace overtures finally meet with a response.

Whether the Report will achieve the political objectives that motivated remains to be seen. What is clear from the outset though, is that it will make no contribution whatsoever to ending the violence in the region, increasing the prospects of a negotiated settlement or enhancing the credibility of the instruments of humanitarian law.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: RELIGIOUS INTOLERANCE

Letter dated 10 December 2001 from the permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights*

I have the honour to transmit herewith the letter dated 28 November 2001, addressed to you by His Excellency Mr. Tahsin Ertuğruloğlu, Minister of Foreign Affairs and Defence of the Turkish Republic of Northern Cyprus.

I would appreciate it if you would have the text of the enclosed letter circulated as an official document of the fifty-eighth session of the Commission on Human Rights under item 11 (e) of the provisional agenda.

(Signed) Murat SUNGAR
Ambassador
Permanent Representative

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* Reproduced as received, in the language of submission only.

GE.01-16514 (E) 110101

Annex

TURKISH REPUBLIC OF NORTHERN CYPRUS
MINISTRY OF FOREIGN AFFAIRS AND DEFENCE
(Lefkoşa via Mersin 10 Turkey)

28 November 2001

Madam High Commissioner,

I have the honour to refer to the letter dated 24 July 2001 addressed to you by the Greek Cypriot representative at the United Nations Office in Geneva, which has been circulated as a document of the 58th Session of the Commission on Human Rights under agenda item 11 (e), "Civil and Political Rights, Including the Question of Religious Intolerance" (E/CN.4/2002/12 dated 17 August 2001). In view of the allegations contained in this letter regarding cultural property in the Turkish Republic of Northern Cyprus, I have deemed it necessary to bring to your kind attention the following.

At the outset, I wish to underline that there is no occupation in Cyprus other than the 38 year-old occupation of the seat of government and exploitation of the usurped title of the "Government of Cyprus" by the Greek Cypriots which has been the main obstacle in the way of reaching an agreement between the two sides in Cyprus. The Greek Cypriot representative's claims that the cultural heritage in the North is being destroyed, have already been conclusively refuted by independent foreign observers, including prominent experts from UNESCO, the World Council of Churches and the Council of Europe.

Mrs. Mary Robinson,
High Commissioner,
Commission on Human Rights,
Geneva.

The respected UNESCO expert Mr. Jacques Dalibard denied Greek Cypriot allegations of systematic and organized looting of cultural heritage of Cyprus in a letter he wrote to *The Times* of London and expressed that great efforts had been exerted in North Cyprus for the protection of cultural property.

The former Rapporteur of the Council of Europe, Senator Van Der Werff, in paragraph 5.1 of his report of 2 July 1989 (AS/Cult/AA (41) (1)) indicates that "In the North ... we saw no churches destroyed" and goes on to say that TRNC authorities are taking utter care in protecting the cultural heritage in Northern Cyprus. Furthermore, in paragraphs 5.4 and 5.5, respectively, he reports that "Restoration is going on in both North and South. Greek Orthodox churches seemed to be in sound structural condition in both the North and South" and that "The coordination of conservation, planning, and environment protection seems better assured in the North than in the South".

The current Rapporteur of the Committee on Culture of the Council of Europe, Mrs. Vlasta Stepova, during her visit to the TRNC on 29 October 1999, has stated that the best way to preserve cultural works is to find alternative everyday use for them. She added that no country in the world has the means to turn every cultural building into a museum or to preserve it fully. She was most impressed by the preservation, through everyday use, of the St. Barnabas Monastery and Salamis Ruins in Gazi Mağusa as a museum and as a venue for cultural events, respectively, and praised the use of Bellapais Monastery in Girne as a concert hall.

Returning to the island in November 2000, Mrs. Stepova repeated her predecessor's (Mr. Ymenus Van Der Werff) conclusion that there is no destruction of cultural heritage in North Cyprus. It is no surprise that she was severely attacked by her Greek Cypriot colleagues in the Parliamentary Assembly for stating her observations; a clear case of intolerance towards truth.

The Director of the Czech State Institute for Monuments Care, Mr. Josef Stulc, who accompanied the Rapporteur on her visit, refuted the Greek Cypriot claims of destruction by clearly stating in his Report that "this (Greek Cypriot) interpretation is not confirmed by my visit to the North" (Report No: AS/Cult/AA (2001) 02, dated 22 June 2001).

The Turkish Cypriot Department of Antiquities and Museums has managed to preserve many other churches which are no longer used for religious purposes, including the churches of St. Mamas in Güzelyurt, Archangelos Michael in Girne, Panagia Theotokos in Yeni İskele and St. John of Mara in Maraş. In these churches an important collection of Christian icons are being preserved.

The Turkish Cypriot Government is implementing its policy of protection and preservation of the cultural heritage, fully conscious of the fact that one of the best ways in preserving historic sites is to find alternative everyday use for them.

This policy is in line with the Charter of Venice of May 1964, Article 5 of which states that "the conservation of historic buildings can be achieved through use for any useful communal purpose", and with the Amsterdam Declaration of 1975 which states, *inter alia*, that "... historic buildings can be given new functions related to the needs of contemporary life" (p. 7, para. 3).

The Greek Cypriot administration which attempts to present itself as the champion of the conservation of cultural heritage shows utter contempt and has always tried to eradicate all traces of Turkish-Muslim heritage of Cyprus in particular during the years between 1963 and 1974, in parallel with their ethnic cleansing policy against the Turkish Cypriots. During this tragic period, mosques, shrines and other places of Muslim worship in 103 villages across the island were destroyed.

Today the Greek Cypriot administration is still perpetrating a policy of religious intolerance and showing undisguised contempt towards the Islamic heritage in South Cyprus. The following quotation on this subject taken from the above-mentioned report of Senator Van Der Werff to the Council of Europe (para. 5.3) reveals the extent of the acts of desecration and wilful destruction of Ottoman Turkish architecture in South Cyprus:

"We noted with regret the complete destruction of the main mosque (Büyük Cami) in Paphos. The whole area has since been flattened to give way for a widened road junction and a car park. There is no memorial to the existence of the mosque. Below the road a Turkish bath complex remains hidden in rubble and vegetation awaiting restoration. The Turkish Cypriot cemetery by the nearby St. Sophia Mouttalas mosque is dilapidated".

The list of Greek Cypriot attacks on Turkish-Muslim religious and cultural heritages are not exhaustive. The Günebakan Mosque and the Kutrafa Mosque were destroyed in 1963; the Bayraktar

Mosque was bombed in 1962 and again in 1964 and it sustained a serious arson attack on 17 February 1994. The tomb of Mehmet Buba in Paphos was desecrated in 1964. The 400 year-old Araplar Mosque was attacked with dynamite on 15 March 1994. The Bayraktar and Omeriye Mosques in Southern Nicosia have been repeatedly attacked with bombs and continue to be a frequent target of arsonists and vandals. Historic Ottoman aqueducts have been torn down in order to create space for the construction of coffee shops and public houses. In a more recent example, on 29 August 1999, the door of the Hala Sultan Tekke in Larnaca, which is one of the most sacred Islamic sites in the world, was forced open by Greek Cypriots who poured petrol into the interior and set it ablaze.

Alongside these acts of wanton destruction, Greek Cypriot policy on Turkish-Muslim cultural heritage in South Cyprus is and has been one of calculated neglect. Often they would refuse permission to repair Ottoman buildings in Greek Cypriot areas and, after declaring them unsafe, would demolish them.

Madam High Commissioner, when an icon or a historical artifact originating from the island appears in the international art market, the Greek Cypriots, instead of admitting to their inability to protect the cultural heritage on their part of the island and spending their time and resources to rectify this shortcoming, find it more expedient to falsely accuse the Turkish Cypriot side.

Successive Governments of the Turkish Republic of Northern Cyprus have been conscious of their responsibilities in implementing a policy of protection and preservation of the cultural heritage in North Cyprus. The above-mentioned Van der Werff report, in para. 5.2 testifies to this end: "A considerable effort has been made in the North to place as much as possible in protective custody. We visited several central depots and were shown receipts and inventories. The depots are carefully sealed, and when in military areas require more than one key".

In 1976 and 1977 the Turkish Cypriot authorities handed over to the Greek Orthodox Church hundreds of icons and other items of church property. They were all listed and signed for before being taken to the South by the Greek Cypriots.

It is important to note that, neither the Greek Cypriot Department of Antiquities nor the Greek Cypriot Orthodox Church had complete registers of the cultural property in their custody

before 1974. According to Dr. Andreas Dimitriou, the President of the Greek Cypriot Archaeologists' Association, "Even now in South Cyprus there are very few icons on photographic record" (Greek Cypriot daily published in English, the *Cyprus Mail* of 19 November 1991).

The problem of theft of valuable public property including works of art and antiquities is not only an international problem, but also one which has existed since time immemorial and clearly transcends political disputes. However, while the plundering of antiquities under the control of the Greek Cypriot administration is interpreted by the Greek Cypriots as part of an international problem which, according to them, they are doing their best to contain, the incidents in the Turkish Cypriot side are presented as part of a deliberate programme for plundering Cyprus' cultural heritage. The following is a good example in this regard. During the 1980's the invaluable "Leda and Swan" mosaic was stolen from the Kuklia Museum situated in the Greek Cypriot district of Paphos. In the face of intense local and international criticism the Greek Cypriot minister in charge of the Greek Cypriot Department of Antiquities made the following statement: "Thefts from the museums, even from the very well known museums in the large cities of Europe and USA, do take place all over the world despite draconian measures that are being taken" (the *Cyprus Mail* of 3 January 1981).

Furthermore, on 20 September 1991 the *Cyprus Mail* wrote that "The flow of antiquities from South Cyprus is turning into a scandal", and reported that the Greek Cypriot Director of the Antiquities Department in South Cyprus had amassed a "private collection" of 1600 items which he had exported to Switzerland. On 18 September 1996 the same newspaper reported that "almost 9000 ancient artifacts were exported legally from Southern Cyprus between 1969 and 1991".

The complicity of senior Greek Cypriot officials in the illicit trade in cultural artifacts was the subject of articles appearing in *The New Yorker* on 13 and 20 July 1992.

On 13 January 1999 Dutch antique dealer, Michel Van Rijn, held a press conference in London at which he recounted how he was recruited by the Greek Cypriot authorities. Van Rijn said that in 1988 he was first approached in The Hague, and was asked to organise the theft and smuggling abroad of antiquities from Northern Cyprus. The smuggled items were subsequently purchased and returned to the Greek Cypriot Orthodox Church with large-scale press coverage.

When it became clear to Van Rijn that the aim of the Greek Cypriot authorities was anti-Turkish propaganda, he held a press conference and presented documents to support his claim.

Madam High Commissioner, the Turkish Cypriot side has done and is still doing everything within its rather limited means to preserve the cultural wealth of Northern Cyprus. Turkish Cypriot authorities have been calling upon international bodies responsible for providing financial and technical assistance in the field to extend such assistance to Northern Cyprus with a view to bolstering its efforts towards the preservation of the cultural heritage. The Greek Cypriot side, however, is sparing no effort in preventing these international organisations from extending any assistance to Northern Cyprus, a clear illustration of the insincerity of the Greek Cypriot administration, which on the one hand, complains repeatedly that sufficient care is not being taken and, on the other, does its utmost through embargoes in all spheres of life to prevent Northern Cyprus from obtaining the means to provide such care.

It is evident from the foregoing that the Greek Cypriot side's complaints regarding cultural property have no basis and are utterly unjustified. Since it is the Greek Cypriot side that has systematically attacked, destroyed or treated with utter disrespect cultural and religious monuments, places of worship and other elements of cultural belongings to the Turkish-Muslim heritage of the island, the Greek Cypriot allegations on this issue appear to be an attempt to cover-up their long-standing policy of religious intolerance.

Please accept, Madam High Commissioner, the assurances of my highest consideration.

Tahsin Ertuğruloğlu
Minister of Foreign Affairs
and Defence

UNITED
NATIONS

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Fifty-eighth session
Item 8 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE

Letter dated 10 December 2001 from the Permanent Observer for Palestine to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

The Israeli occupation forces persist in their policy of imposing severe collective punishments on innocent civilians in the occupied Palestinian territory, demolishing homes, confiscating Palestinian land to build new Israeli settlements thereon and expand the already existing ones, shelling Palestinian residential buildings through air and ground attacks with tank shells, helicopter missiles and machine guns, conducting military incursions into Palestinian-controlled areas, imposing siege and closures on Palestinian towns and villages, uprooting fruit trees and destroying several acres of farmland, thus causing wide fear and anxiety among the civilians and leaving behind them tens of killed, injured, detained, abducted and homeless and wide destruction of property.

In flagrant violation of international law, international humanitarian law, the Fourth Geneva Convention which seeks to protect the lives of protected persons, and in grave breach of human rights norms that affirm the right to life, Israeli occupation forces committed another crime of extrajudicial execution on 28 November, whereby a Palestinian civilian, 30-year-old Rami Mansour, from Al-Shuja'iyah neighbourhood was shot and left to die, bleeding for a long time while ambulances were prevented from reaching him. They assassinated 35-year-old Mahmoud Abu Hannoud and the two brothers, 28-year-old Ma'moun and 34-year-old Ayman Hashaykeh, in Nablus on 23 November 2001.

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Also on 23 November, Israeli occupation troops targeted a Palestinian car near Rafah City, killing 25-year-old Ahmad Al-Hinawi; an Israeli bullet hit him in the head. Fifty-year-old Hadia Salameh and her son Awadh and his wife Ikram were also severely injured in the incident. In another incident in Gaza on the same day, Israeli occupation troops killed 15-year-old Wa'el Radhwan.

In the morning of 12 November, Israeli occupation forces, armed with 20 military jeeps and at least 10 tanks, accompanied by Apache helicopters roaming in the air, invaded the village of Tel, south of Nablus city, raided tens of civilian homes, terrorizing their residents, assassinated a defenceless man, 25-year-old Mohamed Al-Raihan, in a senseless crime of summary execution, arrested at least 40 civilians and demolished a number of homes.

In Khan Yunis on 22 November, five boys, aged 6 to 14, all from the same extended family, were on their way to school near the Khan Yunis refugee camp when a bomb planted by Israeli commandos exploded, killing them instantly. The victims' parents were only able to identify their loved ones from the burnt and torn schoolbooks they left behind. The five boys are: 6-year-old Akram, 13-year-old Mohamed, 9-year-old Anees, 12-year-old Omar and 13-year-old Mohamed, all from the Al-Astal extended family.

Israeli occupation authorities also continue to spread terror in Palestinian cities and towns, blindly targeting civilians and residential areas, where defenceless women and children are murdered in their own homes. Wafaa' Nassif, a young mother, was fatally shot in her own home in Tulkarem on 13 November, when Israeli occupation forces opened unprovoked and indiscriminate fire on homes in Irtah valley. Four other civilians suffered shrapnel wounds during the Israeli offensive.

As for the aggressive Israeli measures taken against civilians at checkpoints, they have not only caused agony to Palestinian civilians who face daily aggression, humiliation and needless delays, they have also cost hundreds of Palestinian lives. Fifty-six-year-old Sami Al-Bassaleh died in the early hours of 21 November after he had been prohibited twice from seeking urgent medical treatment.

Fifty-five-year-old Mohammed Al-Ziben from Kufur Rumman in Tulkarem died on 13 November at one of these many checkpoints. Israeli occupation forces prohibited him from reaching a hospital in Nablus, where he needed to undergo dialysis.

On Friday, 9 November, Israeli troops at Gani Tal settlement seriously wounded Sameer Abu Haleeb in the side and the right leg. The man died later in hospital.

In the Gaza Strip on the same day, Israeli soldiers in Neve Dakalim settlement opened fire on Palestinian children playing near their homes in Khan Yunis. Ahmad Mustafa, 13, was wounded seriously in the head during the unprovoked Israeli assault. He was admitted to hospital where he passed away on Monday, 12 November 2001.

Since the outbreak of the Israeli hostilities on 29 September 2000, at least 80 Palestinian activists have been killed through the illegal assassination policy conducted by Israel, some of whom were bystanders, bringing the total number of martyrs as of the end of November 2001 to nearly 879 and the total wounded to nearly 28,747, about 2,200 of whom sustain permanent handicaps.

In follow-up to the lists of the names of martyrs annexed to some of my previous letters, namely the one dated 5 October 2001, herewith enclosed* is a list with the names of martyrs for the period from 30 September to 29 November 2001.

We once again reiterate our appeal to Your Excellency, and through you to the international community, to call on Israel to withdraw from the occupied Palestinian territory if peace and security are to be restored in the area, to ease the suffocating Israeli restrictions imposed at checkpoints, to ease the siege imposed on Palestinian towns and villages which is leading the Palestinian people to starvation, to bring an end to the Israeli military campaign being waged against the Palestinian people, to demand that Israel stop acting with complete impunity and disregard for international law and to provide immediate international protection to the civilians in the occupied Palestinian territories.

I would be grateful if you would have this letter with its enclosure circulated as an official document of the fifty-eighth session of the Commission on Human Rights under agenda item 8.

(Signed): Nabil RAMLAWI
Ambassador
Permanent Observer

* Reproduced in the annex as received, in the language of submission only.

Annex

List of Palestinian Martyrs - 2001

30/9/2001

Husni Abu Leil	19 years old	Nablus
Khalil Sarafandi	50 years old	Nablus
Nidal Fakhouri	25 years old	Hebron
Walid Al-Ahmad	27 years old	Salfit

3/10/2001

Abdullah Sha'ban	20 years old	Gaza
Ibrahim Rayyan	19 years old	Gaza
Nour Aldin Qweider	25 years old	Gaza
Mahmoud Abu Hani	27 years old	Gaza
Wael Awwad	25 years old	Gaza
Sayyed Zeyadeh	24 years old	Gaza
Maher Khudeir	23 years old	Gaza
Mahmoud Shorafa	25 years old	Gaza

4/10/2001

Mohammad Sharabasi	28 years old	Hebron

5/10/2001

Raed Abu Daoud	23 years old	Hebron
Hazem Amro	27 years old	Hebron
Iyad Qufeisheh	28 years old	Hebron
Mohammad Qufeisheh	34 years old	Hebron
Qassim Abu Afeefeh	48 years old	Hebron

6/10/2001

Hamza Qawasmi	24 years old	Hebron
Amjad Qawasmi	24 years old	Hebron

7/10/2001

Raed Shareef	22 years old	Hebron
Ahmad Abu Midraj	18 years old	Tubas

8/10/2001

Abdulrahman Abu Ereiban	30 years old	Gaza

9/10/2001

Jam'an Abu-Alsawawein	29 years old	Gaza
Talal Abu Hweishel	28 years old	Gaza
Ahmad Eteiwi	25 years old	Gaza

10/10/2001

Moh'd Abu Al-Rous	33 years old	Gaza

11/10/2001

Hani Rawajyeh	24 years old	Nablus

13/10/2001

Abdulrahman Hammad	34 years old	Qalqilyah

15/10/2001

Ahmad Marshoud	24 years old	Nablus

16/10/2001

Ahmad Ebayyat	24 years old	Bethlehem
Iyad Al-Akhras	28 years old	Gaza

18/10/2001

Mohammad Abu Ras	20 years old	Ramallah
Marwan Khaleefah	25 years old	Ramallah
Riham Abu El-Ward	10 years old female	Jenin
Atef Ebayyat	30 years old	Bethlehem
Jamal Abdullah	33 years old	Bethlehem
Eisa Ebayyat	28 years old	Bethlehem

19/10/2001

Mousa ABu Eid	20 years old	Beit-Jala
Jawdat Hamad	21 years old	Gaza
Maryam Salah	36 years old female	Bethlehem
Abdulqader Abu Srour	25 years old	Bethlehem
Saed Al-Aqra'	24 years old	Ramallah
Basil Mobasher	13 years old	Gaza

20/10/2001

Johny Thaljeyyeh	18 years old	Bethlehem
Yousif Ebayyat	15 years old	Bethlehem
Aysheh Abu Odeh	36 years old female	Bethlehem
Ranya Kharouf	23 years old female	Bethlehem
Rihab Noufal	31 years old female	Bethlehem
Samer Shawahneh	21 years old	Qalqilyah
Mustafa Noufal	22 years old	Qalqilyah
Mustafa Zeitawi	53 years old	Tulkarem
Maher Abu Hasna	33 years old	Tulkarem

21/10/2001

Ahmad Abu Mandil	17 years old	Gaza
Ghada Abu Eishah	18 years old	Jenin
Eisa Abu Hleil	28 years old female	Beit-Jala
Mohammad Baraq'ah	32 years old	Bethlehem

22/10/2001

Yousif Alsheikh Abed	60 years old	Tulkarem
Nidal Elayyan	19 years old	Bethlehem
Ayman Halawah	26 years old female	Nablus
Yousif Ayesh	33 years old	Bethlehem

23/10/2001

Naser Qur'an	13 years old	Qalqilyah
Bader Al-Sha'er	50 years old	Tulkarem
Tal'at Jaber	19 years old	Tulkarem

24/10/2001

Mohammad Sama'neh	24 years old	Nablus
Ayman Jallad	20 years old	Tulkarem
Mahmoud Jallad	21 years old	Tulkarem
Saleh Asi	23 years old	Tulkarem
Marwan Halabeyyeh	20 years old	Jerusalem
Kamel Barghouti	20 years old	Ramallah
Harees Hajjo	29 years old	Nablus
Qassim Moghrabi	26 years old	Gaza
Rafeeq Saqer	25 years old	Gaza
Eisa Al-Ali	55 years old	Bethlehem

25/10/2001

Salameh Al-Debs	38 years old	Bethlehem
Wael Elayyan	22 years old	Bethlehem
Firas Salahat	29 years old	Bethlehem
Fareed Abu Jalaleh	22 years old	Bethlehem
Haytham Abu-Samehdaneh	23 years old	Gaza
Hasan Abu Serreyeh	43 years old	Tulkarem

26/10/2001

Eid Abu Sharkh	25 years old	Gaza
Othman Razayneh	22 years old	Gaza
Iyad Al-Batsh	21 years old	Gaza
Foad Dahshan	27 years old	Gaza

27/10/2001

Firas Jaber	24 years old	Tulkarem

31/10/2001

Jamil Jadallah		Gaza
Abdulla Jaroushi	42 years old	Tulkarem
Mohammad Ghannam	30 years old	Jenin
Rabei' Ghannam	22 years old	Jenin
Mohammad Abu Jamil	40 years old	Qalqilyah
Raed El-Akhras	25 years old	Qalqilyah

1/11/2001

Yaser Sayati		Tulkarem
Fahmi Abu Eisheh		Tulkarem

3/11/2001

Salah Ghazali	45 years old	Gaza

4/11/2001

Hatim Shweiki		Tulkarem

5/11/2001

Abdulnaser Hudeib	35 years old	Jerusalem
Saeed Abu Shmeis	26 years old	Ramallah

6/11/2001

Iyad Khatib	28 years old	Nablus
Ali Abu Hejleh	22 years old	Nablus
Jamal Mallouh	23 years old	Nablus
Ekremah Esteeteh	35 years old	Jenin
Majdi Jaradat	32 years old	Jenin

7/11/2001

Eisa Dababseh	45 years old	Hebron
Mohammad Kaskeen	25 years old	Gaza
Mohammad Al-Qedra	23 years old	Gaza

8/11/2001

Abdulrahman Abu Ereiban	30 years old	Gaza
Mousa Abu A'yya	57 years old	Gaza

9/11/2001

Mo'ayad Salahuldin	24 years old	Tulkarem
Sameer Abu Haleeb	30 years old	Gaza

11/11/2001

Omar Abu Zeid	28 years old	Bethlehem

12/11/2001

Ahmad Abu Mustafa	13 years old	Gaza
Mohammad Hamad	25 years old	Nablus

13/11/2001

Mohammad Zeben	55 years old	Tulkarem
Wafaa Naseef	28 years old female	Tulkarem

15/11/2001

Suheil Abu Saleh	27 years old	Gaza

18/11/2001

Taher Zeid	17 years old	Jenin
Ibrahim Saed	70 years old female	Gaza

19/11/2001

Maher Daghlas	22 years old	Nablus
Medhat Abu Dalal	32 years old	Gaza
Mohammad Hasan	35 years old	Gaza

21/11/2001

Sami Basaleh	56 years old	Gaza

22/11/2001

Akram N. Astal	6 years old	Gaza
Mohammad N. Astal	12 years old	Gaza
Anees I. Astal	10 years old	Gaza
Omar I. Astal	11 years old	Gaza
Mohammad S. Astal	12 years old	Gaza

23/11/2001

Wael Radwan	15 years old	Gaza
Ahmad Hinnawi	25 years old	Gaza
Mohammad S. Samaneh	21 years old	Nablus
Mohammad I. Samaneh	20 years old	Nablus
Mahmoud Abu Hanoud	35 years old	Nablus
Ayman R. Hashaykeh	30 years old	Nablus
Mamoun R. Hashaykeh	33 years old	Nablus

25/11/2001

Kifah Ubeid	13 years old	Bethlehem

26/11/2001

Tayseer Ajrami	25 years old	Gaza

27/11/2001

Abdulkareem Abu Na'seh	23 years old	Jenin
Mustafa Abu Sereyeh	21 years old	Jenin
Osama Helles	23 years old	Gaza

28/11/2001

Ibrahim Ghalami	80 years old	Nablus

29/11/2001

Hasan Zbeidi	25 years old	Nablus
Rashad Muhanna	37 years old	Tulkarem
Rami Mansour	30 years old	Gaza

Palestine Ministry of Information